

Nanhu Prasad Singh

Vs

State of Bihar

Criminal Appeal No. 96 of 1968

(J. M. Shelat, I. D. Dua, S. C. Ray JJ)

02.09.1971

JUDGMENT

SHELAT, J. -

1. This appeal, by special leave, is directed against the judgment of the High Court of Patna which upheld the order of conviction passed by the Special Judge, Muzaffarpur against the appellant under Section 5(1)(c), read with Section 5 (2) of the Prevention of Corruption Act, II of 1947. The High Court, however, reduced that sentence awarded to the appellant from two years' rigorous imprisonment to four months' rigorous imprisonment on consideration of his old age and the fact of his having subsequently paid up the amount alleged to have been embezzled by him.

2. At the time of the offence alleged against him, the appellant was working as an extra-departmental agent, Chairaila Post Office in Muzzafarpur District. On December 27, 1960, one Rupen Chaudhary sent from Calcutta a money order for Rs. 100/- to his brother Biseshwar of Jaya village which used to be served by Chairaila Post Office. The money order was never received by the payee, the said Biseshwar. On discovery of that fact, a departmental enquiry was first made thereafter prosecution was launched against the appellant, who as a result thereof, was convicted and sentenced as aforesaid.

3. The defence of the appellant was that there was another individual bearing the name of Biseshwar Chaudhary to whom the appellant had paid the said amount on being identified as such by one Thakur Prasad Chaudhary, that the appellant had paid the said amount to that Biseshwar under a bona fide belief that he was the true remittee, and that subsequently, after the enquiry was instituted, he discovered his mistake and got the said Biseshwar to refund the amount to him, which amount the appellant in his turn paid to the Post Office. The second defence was that he being a public servant, the Special Judge could not take cognizance of the offence unless sanction to prosecute him under Section 6 of the Act was first obtained and that not having been done the trial was vitiated. Both these contentions were rejected by the Special Judge and the High Court on the ground that whereas the Special Judge took cognizance of the offence on July 16, 1962, the appellant had already been dismissed from service long before that date, and therefore although he was a public servant at the date of the offence, he had ceased to be one on the date when the Trial Judge took cognizance of the offence. Therefore, no sanction under Section 6 was required, and there was no defect in the trial.

4. Counsel for the appellant did not raise before us any contention on the merits of the prosecution case in view of the concurrent findings of both the Courts of facts. Consequently, the only contention he raised was about the necessity of sanction without which, he urged, the trial was

vitiated in view of the requirement being mandatory under Section 6 of the Act. Therefore, the only question which need an answer is whether the appellant was in fact removed from service prior to July 16, 1962.

5. It is not in dispute that the appellant was an extra-departmental agent and as such he was only performing the duties which would be the duties of a village post-master. It is also not disputed that his service could be terminated and he could be removed from service by the Inspector of Post Offices, the relevant Inspector at the material time being witness Suren, who also was the appointing authority. It is on record that on May 12, 1961 Suren passed an order in the following terms :

"Subject : Chairaila M.O. fraud case.

Please remove Shri Nanhu Singh R. D. A. Chairaila at once pending enquiry."

At first sight it would appear from the penultimate words of that order that the appellant was merely suspended pending enquiry, but not removed from service. That perhaps would have been the meaning placed on the order, if that was the only evidence to indicate what actually the order meant. In his evidence, however, Suren explained that the appellant was dismissed by that order. It would seem that the appellant also understood the order, Ex. 16, as being one of dismissal for, no questions were asked to Suren in cross-examination pointing out the words "pending enquiry" in that order meant suspension and not removal from service. Apparently, the order, Ex. 16 was expressed in loose language. Nevertheless, everybody concerned understood that order to be a dismissal order and acted accordingly. Besides, it was never the case of the appellant that he was suspended pending an enquiry and he, therefore, never claimed any subsistence allowance or any other allowance ordinarily claimed by public servants suspended during an enquiry held against them or a trial where they are prosecuted. If the appellant had understood the order as one of suspension we would have expected him to put that case to Suren when the latter asserted in his evidence that he had by that order dismissed him from service. Witness Shiv Shankar Raut, the Head Clerk in the office of the Superintendent of Post Offices, also deposed that the appellant was only an extra-departmental agent and that such agents were appointed and were removable from service by Inspectors of Post Offices. He also deposed that as from May 15, 1961 the appellant never worked as an extra-departmental agent. No questions were asked to him also in cross-examination disputing the fact that he was removed from service by the said order. Witness Sarjug Prasad also deposed that he took charge of Chairaila Post Office from the appellant "because he was removed from service". The investigating officer also deposed likewise that when he submitted the charge-sheet in this case, the appellant was no longer in service. None of these witnesses was cross-examined do dispute the aforesaid position deposed to by each one of them.

6. It would thus appear from the evidence that every one concerned, including the appellant, understood the order, Ex. 16, to be one of removal from service as the extra-departmental agent. The words "pending enquiry" in the order did not mean that the order was intended or understood to be one of suspension. Those words appear to have been used by Suren to mean that though the appellant was removed from service, if the enquiry did not turn out to be against him, he could once more be appointed as an agent. It seems that such being the understanding of the order by all the concerned parties, no cross-examination was addressed to any one of the witnesses suggesting that the said order was only an order of suspension. Even in the written statement, which the appellant filed in the trial Court in answer to the evidence led by the prosecution the appellant submitted that the trial was bad for want of sanction "as the service of this accused has not been terminated as yet

as contemplated by law". The contention thus was not that he was suspended from service, but that his removal therefrom was not in accordance with law. He did not even then suggest that the order was one suspending him from service pending an enquiry or that he was not factually dismissed. No contention also was raised before us that the dismissal was in any way unauthorised or illegal otherwise.

7. That being the position, it is not possible to hold that on the day when the Special Judge took cognizance of the offence under the Prevention of Corruption Act, II of 1947, the appellant was still a public servant, and therefore, sanction was necessary. The appellant fails in his contention and hence his appeal has to be rejected.

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